

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF TAX APPEALS
FILE NOS. K03-S-08 AND K04-S-61**

ST. ANDREWS ORTHODOX CHURCH, INC.

APPELLANT

V.

ORDER NO. K-19271

**JESSAMINE COUNTY PROPERTY
VALUATION ADMINISTRATOR**

APPELLEE

The Kentucky Board of Tax Appeals conducted a hearing in this matter on November 8, 2004 and makes the following findings of fact, conclusions of law and final order.

FINDINGS OF FACT

This assessment appeal is for real property located at 2340 Brannon Road and 2300 Brannon Road, Nicholasville, Kentucky. The Jessamine County Property Valuation Administrator assessed the property at \$630,000.00. The taxpayer or Appellant values the property at \$630,000.00. The Jessamine County Board of Assessment Appeals valued the property at \$630, 000.00.

The Appellants filed a timely appeal from the local board with the Kentucky Board of Tax Appeals. The assessed value was not appealed. The matter before the Board was to determine if the church property was exempt from taxation due to ownership and use of property by St. Andrew Orthodox Church under the Kentucky Constitution § 170.

Father Thomas Gallaway testified that the properties were owned by St. Andrew Church and rented as a source of income to reduce the mortgage on the property. The land was the location of a prayer area and the basement of one of the houses was used to store items belonging to the church. Summer picnics were also held occasionally on the property.

Under the Kentucky Constitution § 170, in order for real estate to be exempt from taxation, it must be “owned... and occupied by ... institutions of religion.” The issue before this Board is whether St. Andrew Orthodox Church, Inc., not only owned the property, but occupied the property within the meaning of the Constitution.

Although the church occasionally used the property, and stored some of its items in a small portion of one of the buildings, it is the finding of the Board that St. Andrew Orthodox Church, Inc. does not occupy the property; the property is occupied by tenants who pay rent to the Church. The fact that the income derived from the tenant is used to reduce church debt on the property, is not a part of the criteria to determine the tax exempt status of the property. Since the Church does not actually occupy the property, it is subject to being taxed by the Jessamine County Property Valuation Administrator. See Ashland v. Calvary Protestant Episcopal Church, 278 S. W. 2d 708 (Ky. 1944).

It is the finding of the hearing that the Appellant did not sustain its burden of proof regarding its challenge to the final order of the Jessamine County Board of Assessment Appeals.

Based upon the evidence in the record, it is the finding of this Board, through its hearing officers, Nancy Mitchell and Randall Phillips, that the fair cash value of the property in question is \$630,000.00 and that said property is not exempt from taxation.

CONCLUSION OF LAW

The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, order and determinations of the Jessamine County Board of Assessment Appeals pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Jessamine County Board, but to try anew the issues as presented. Jefferson County Property Valuation Administrator v. Oxford Properties, Inc., Ky. App., 726 S. W. 2d 317, 319 (1987). See KRS 131.340(1).

Section 172 of the Kentucky Constitution mandates that “all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring a fair voluntary sale.

FINAL ORDER

It is the decision of the Kentucky Board of Tax Appeals that the ruling of the Jessamine County Board of Assessments Appeals be sustained and the real property be assessed at its fair cash value of \$ 630,000.00 and that the tax assessment on said property by the Jessamine County Board of Assessment Appeals be sustained.

The following information is provided pursuant to the final order requirements of KRS Chapter 13B:

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within Twenty (20) days after service of the petition of appeal, or within further

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time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER
AND MAILING: MARCH 2, 2005**

FULL BOARD CONCURRING

**NANCY MITCHELL
CHAIR**